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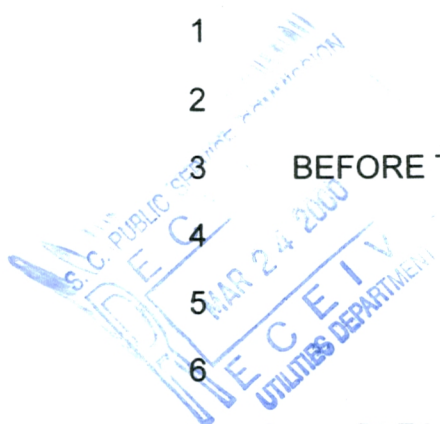
BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF W. KEITH MILNER

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2000-040-C

MARCH 24, 2000



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Q. PLEASE STATE YOUR NAME, YOUR BUSINESS ADDRESS, AND
YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC.

A. My name is W. Keith Milner. My business address is 675 West
Peachtree Street, Atlanta, Georgia 30375. I am Senior Director -
Interconnection Services for BellSouth Telecommunications, Inc.
("BellSouth"). I have served in my present role since February 1996,
and have been involved with the management of certain issues related
to local interconnection, resale, and unbundling.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. My business career spans over 29 years and includes responsibilities in
the areas of network planning, engineering, training, administration, and
operations. I have held positions of responsibility with a local exchange
telephone company, a long distance company, and a research and
development laboratory. I have extensive experience in all phases of
telecommunications network planning, deployment, and operations
(including research and development) in both the domestic and

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1 international arenas.

2

3 I graduated from Fayetteville Technical Institute in Fayetteville, North
4 Carolina, in 1970, with an Associate of Applied Science in Business
5 Administration degree. I later graduated from Georgia State University
6 in 1992 with a Master of Business Administration degree.

7

8 Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE ANY STATE PUBLIC
9 SERVICE COMMISSION, AND IF SO, BRIEFLY DESCRIBE THE
10 SUBJECT OF YOUR TESTIMONY?

11

12 A. I have testified before the state Public Service Commissions in
13 Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, and South
14 Carolina, the Tennessee Regulatory Authority, and the Utilities
15 Commission in North Carolina on the issues of technical capabilities of
16 the switching and facilities network regarding the introduction of new
17 service offerings, expanded calling areas, unbundling, and network
18 interconnection.

19

20 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY BEING FILED
21 TODAY?

22

23 A. In my testimony, I will address the technical aspects of network-related
24 issues that have been raised by e.spire Communications, Inc.
25 ("e.spire") in its Petition for Arbitration. Those issues, in whole or in

1 part, are 27-29, 38-46, and 50.

2

3 ***Issue 27: Should both parties be allowed to establish their own local***
 4 ***calling areas and assign numbers for local use anywhere within such***
 5 ***areas, consistent with applicable law?***

6

7 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

8

9 A. All telecommunications carriers obtain NPA/NXXs from the North
 10 American Numbering Plan Administrator based upon established
 11 guidelines. Once the NPA/NXX has been assigned, the requesting
 12 carrier associates the NPA/NXX with a local rate center and its Vertical
 13 and Horizontal (V&H) coordinates via the national Business Rating
 14 Input Database System ("BRIDS"). Telecommunications providers
 15 nationwide use the BRIDS to know how to rate their own end user calls.
 16 This is because most end user billing is determined using the V&H
 17 coordinates of the originating NPA/NXX and the terminating NPA/NXX,
 18 which assumes that an end user is located within the same local calling
 19 area as their NPA/NXX is assigned. However, when a CLEC assigns
 20 numbers having the same NPA/NXX to customers both inside and
 21 outside the BellSouth local calling area where the NPA/NXX is homed,
 22 BellSouth is unable, on its own, to determine whether BellSouth's end
 23 users are making a local or a long distance call when BellSouth's end
 24 user calls the CLEC's end user. Consequently, BellSouth can't tell
 25 whether access or reciprocal compensation should apply to the

1 resulting traffic. For example, if e.spire assigns 803-972-1111 to an
2 end user within BellSouth's local calling area and 803-972-2222 to an
3 end user outside BellSouth's local calling area, it is not possible for
4 BellSouth to determine, solely based on the NPA-NXX (i.e., 803-972),
5 whether access charges or reciprocal compensation should apply.

6
7 Q. PLEASE RESPOND TO MR. FALVEY'S CONTENTION ON PAGE 34
8 OF HIS TESTIMONY THAT BELL SOUTH IS ATTEMPTING TO LIMIT
9 E.SPIRE'S ABILITY TO ESTABLISH ITS OWN LOCAL CALLING
10 AREAS.

11
12 A. BellSouth is indifferent to the manner in which e.spire defines its local
13 calling areas for e.spire's own end users. e.spire must, however,
14 conform to industry practices for the routing of traffic. What is important
15 to BellSouth is that it be provided sufficient information to ensure that it
16 is properly billing its end users for toll or local calls, and appropriately
17 charging e.spire access charges or reciprocal compensation. e.spire
18 has not presented a viable means whereby BellSouth can make this
19 crucial distinction. Contrary to Mr. Falvey's contention, BellSouth's
20 interest in knowing e.spire's NPA/NXX code homing arrangements is in
21 no way an effort to limit e.spire's flexibility in how it designs and
22 operates its network. BellSouth's interest is simply in ensuring that
23 calls are successfully routed, completed, and billed.

24
25 Q. IS BELL SOUTH "ATTEMPTING TO COMPEL E.SPIRE TO

1 INTERCONNECT AT MULTIPLE ACCESS AND LOCAL TANDEMS”
 2 AS STATED BY MR. FALVEY ON PAGE 34 OF HIS TESTIMONY?

3
 4 A. No, BellSouth is not attempting to compel e.spire to interconnect at
 5 multiple tandems. All CLECs, including e.spire, are free to interconnect
 6 with BellSouth’s network at a single point or at multiple points
 7 depending upon each CLEC’s business needs. All BellSouth wants is
 8 assurances that it will have sufficient information to appropriately bill
 9 traffic between BellSouth’s end users and e.spire’s end users.

10
 11 Q. IS BELLSOUTH ATTEMPTING “TO PLACE LIMITS” ON THE TYPES
 12 OF TRAFFIC E.SPIRE AND OTHER CLECS MAY CARRY OVER
 13 COLLOCATED FACILITIES?

14
 15 A. No, BellSouth is not attempting to place limits on the use of collocated
 16 facilities as it relates to this issue. Indeed, I fail to see any connection
 17 between this issue and any collocation issue.

18
 19 Q. IS BELLSOUTH TRYING TO “FORCE E.SPIRE TO CHARGE TOLL
 20 RATES” AGAINST ITS WILL AS MR. FALVEY STATES ON PAGE 34
 21 OF HIS TESTIMONY?

22
 23 A. No. e.spire may charge its customers whatever it wishes. BellSouth is
 24 merely seeking sufficient data to permit it to accurately bill BellSouth’s
 25 end users BellSouth’s rates.

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Q. DOES MR. FALVEY'S STATEMENT ON PAGE 35 OF HIS
TESTIMONY THAT "E.SPIRE'S PROPOSAL WOULD ALLOW
BELLSOUTH TO IDENTIFY WHAT TYPE OF TRAFFIC E.SPIRE IS
SENDING TO BELLSOUTH" ADEQUATELY ADDRESS THE ISSUE?

A. No, it does not. While e.spire's proposal might identify the "type" of
traffic being sent to BellSouth, it does not provide sufficient information
about the traffic sent from BellSouth to e.spire in order to enable
BellSouth to accurately bill BellSouth's end users and thereby recover
its costs. Thus, e.spire's proposal is not acceptable and should not be
adopted by the Commission.

***Issue 28: In the event that e.spire chooses multiple tandem access
("MTA"), must e.spire establish points of interconnection at all BellSouth
access tandems where e.spire's NXX's are "homed"?***

Q. WHAT IS MTA?

A. Multiple tandem access or MTA provides for a CLEC's choosing
interconnection to a single access tandem, or, alternatively, less than all
access tandems within the LATA, for the CLEC's terminating local and
intraLATA toll traffic; the LEC's terminating local and intraLATA toll
traffic; and transit traffic to and from other CLECs, Interexchange
Carriers (IXCs), Independent Companies, and Wireless Carriers. MTA

3
1 can be established with one-way trunks and/or two-way trunks. One
2 restriction to this arrangement is that all of the CLEC's NXXs must be
3 associated with the access tandems with which the CLEC
4 interconnects; otherwise, the CLEC must interconnect to each tandem
5 where an NXX is "homed" for transit traffic switched to and from an IXC.
6 It is this industry restriction with which e.spire apparently disagrees.
7

8 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?
9

10 A. If e.spire elects BellSouth's MTA offer, e.spire must designate, for each
11 of e.spire's switches, the BellSouth tandem at which BellSouth will
12 receive traffic originated by e.spire's end user customers. The MTA
13 option obviates the need for the CLEC to establish interconnecting
14 trunking at access tandems where the CLEC has no NPA/NXX codes
15 homing. However, the CLEC must interconnect where its NPA/NXX
16 codes home.
17

18 NPA/NXX code homing arrangements are published in the Local
19 Exchange Routing Guide (LERG) so that all telecommunications
20 companies in the industry will know where in the network to send calls
21 to the designated NPA/NXX code and where in the network calls from
22 the designated NPA/NXX code will originate. Telecommunications
23 service providers then build translations and routing instructions based
24 on that information to ensure the proper handling of calls. If
25 telecommunications service providers do not know where e.spire's

1 NPA/NXX codes are homed, then it is impossible for proper translations
2 and routing instructions to be created and implemented. As a result,
3 calls to and from e.spire's end user customers cannot be completed.
4

5 For example, if e.spire assigns its NPA/NXXs to a BellSouth Exchange
6 Rate Center, e.spire must home such NPA/NXXs on the BellSouth
7 access tandem serving that BellSouth Exchange Rate Center.

8 Correspondingly, in order for BellSouth to deliver terminating IXC
9 switched access traffic to the e.spire switch serving those e.spire
10 NPA/NXXs, e.spire must establish a trunk group to that BellSouth
11 access tandem switch. This is normal NPA/NXX homing and network
12 traffic routing practice within the industry.
13

14 BellSouth does not attempt to limit e.spire's flexibility regarding the
15 design or operation of its network, but BellSouth and all other
16 telecommunications service providers must know of e.spire's plans in
17 order that required translations and routing instructions be installed to
18 ensure the correct handling of calls to and from e.spire's end user
19 customers.
20

21 Q. IS BELL SOUTH ATTEMPTING TO "FORCE E.SPIRE TO
22 CONFIGURE ITS NETWORK TO LOOK LIKE BELL SOUTH'S
23 NETWORK" AS MR. FALVEY STATES ON PAGE 35 OF HIS
24 TESTIMONY?
25

1 A. Absolutely not. As I have just discussed in my testimony above on this
 2 issue, BellSouth just wants to know (1) how to route traffic from its
 3 network to e.spire's network and (2) from where BellSouth will get traffic
 4 that originates on e.spire's network.

5
 6 ***Issue 29: Should language concerning local tandem interconnection be***
 7 ***simplified to exclude, among other things, the requirement to designate***
 8 ***a "home" local tandem for each assigned NPA/NXX and the requirement***
 9 ***to establish points of interconnection to BellSouth access tandems***
 10 ***within the LATA on which e.spire has NPA/NXXs "homed"?***

11
 12 Q. WHAT IS LOCAL TANDEM INTERCONNECTION?

13
 14 A. Interconnection with a BellSouth local tandem allows a CLEC to
 15 terminate its local traffic to end offices within a local calling area rather
 16 than the CLEC interconnecting its switch(es) directly with each end
 17 office within that local calling area. Alternatively, CLECs may also
 18 interconnect with BellSouth and other service providers via BellSouth's
 19 access tandems to exchange local traffic. BellSouth offers
 20 interconnection at both its access tandems and local tandems.

21
 22 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

23
 24 A. e.spire may interconnect its network to BellSouth's network at one or
 25 more access tandems in the LATA for delivery and receipt of its access

1 traffic. However, e.spire must interconnect at each access tandem
2 where its NPA/NXX codes are homed, and must inform all other
3 telecommunications service providers where traffic for a given
4 NPA/NXX code should be delivered for completion of e.spire's end
5 user's calls. As I previously discussed in Issue 28, this information
6 enables all telecommunications service providers to build translations
7 and routing instructions based on that information to ensure the proper
8 handling of calls. Without knowing where e.spire's NPA/NXX codes are
9 homed, calls to and from e.spire's end user customers cannot be
10 completed.

11
12 BellSouth's local tandems were designed for efficient tandem switching
13 of local traffic served by those local tandems. By interconnecting to a
14 BellSouth local tandem, e.spire may deliver its originated local traffic to
15 BellSouth end offices (and third party end offices) subtending that
16 BellSouth local tandem. If more than one BellSouth local tandem
17 serves a particular BellSouth local calling area, and e.spire elects to
18 interconnect at BellSouth's local tandem(s) for e.spire's local traffic,
19 e.spire must (1) establish one or more of the BellSouth local tandems
20 as a home local tandem for its NPA/NXXs and (2) establish
21 interconnection to the BellSouth local tandem(s) on which e.spire
22 homes its NPA/NXXs. Once again, this is normal network homing and
23 routing practice necessary for BellSouth and third parties to know how
24 to deliver traffic to e.spire by the most efficient means possible.
25 Obviously, if telecommunications service providers do not know where

1 e.spire's NPA/NXX codes are homed, then it is impossible for proper
2 translations and routing instructions to be created and implemented. As
3 a result, calls to and from e.spire's end user customers cannot be
4 completed.

5
6 In order for all entities in the telecommunications industry to be able to
7 configure their own networks for delivery and receipt of calls, a
8 "homing" arrangement for every NPA/NXX code in the network is
9 required. Further, requirements for the treatment of exchange access
10 traffic have already been developed and have long been in place.

11
12 Q. DOES LOCAL TANDEM INTERCONNECTION DICTATE HOW
13 E.SPIRE CONFIGURES ITS LOCAL CALLING AREA?

14
15 A. No, e.spire can always interconnect to BellSouth's access tandem and
16 define e.spire's local calling area in whatever way e.spire decides is
17 best.

18
19 Q. DO BELL SOUTH'S POSITIONS IN THIS DOCKET "RESTRICT THE
20 TYPES OF TRAFFIC E.SPIRE CAN CARRY OVER THE
21 INTERCONNECTED FACILITIES" AS IMPLIED BY MR. FALVEY ON
22 PAGE 36 OF HIS TESTIMONY?

23
24 A. No such restrictions are involved. Indeed, in this issue the discussion is
25 not about the types of traffic involved, but is about the points in

1 BellSouth's network and CLECs' networks where traffic will be
2 exchanged.

3

4 ***Issue 38: Should e.spire be permitted the option of running copper***
5 ***entrance facilities to its BellSouth collocation space in addition to fiber?***

6

7 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

8

9 A. The rules regarding an ILEC's ("Incumbent Local Exchange Carrier")
10 collocation obligation under the Act established by the FCC in the First
11 Report and Order clearly state that the ILEC has no obligation to
12 accommodate copper entrance facilities unless and until such
13 interconnection is first approved by the state commission. 47 CFR
14 §51.323(d)(3) states as follows:

15 "When an incumbent LEC provides physical collocation, virtual
16 collocation, or both, the incumbent LEC shall permit
17 interconnection of copper or coaxial cable if such interconnection
18 is first approved by the state commission."

19

20 This rule was not altered by the FCC's decision in its *Advanced*
21 *Services Order and NPRM*. To BellSouth's knowledge, e.spire has no
22 approval from this Commission to use anything but fiber in BellSouth's
23 entrance facilities.

24

25 Q. PLEASE EXPLAIN BELL SOUTH'S RATIONALE FOR NOT

1 PERMITTING E.SPIRE THE OPTION OF RUNNING COPPER
2 FACILITIES, IN ADDITION TO FIBER, TO ITS BELL SOUTH
3 COLLOCATION SPACE.
4

5 A. e.spire's proposal ignores the potential for exhaustion of entrance
6 facilities to BellSouth's central office that use of copper entrance
7 facilities would create. Exhaustion of entrance facilities would impact
8 both BellSouth and any CLEC wishing to establish a collocation
9 arrangement in that central office. The trend in the telecommunications
10 industry is for cables and equipment to be reduced in size, not
11 increased in size. For example, yesterday's 3,600 pair copper cable
12 required its own four inch conduit. The circuit capacity provided by that
13 copper cable can now easily be provided by a fiber optic cable which is
14 a little more than one-half inch in diameter, an eight-fold reduction.
15 e.spire would prefer to reverse these technological advancements and
16 place copper cables through entrance facilities with finite capacity.
17 BellSouth is not required to accommodate non-fiber optic facilities in its
18 entrance facilities. Such accommodation would accelerate the exhaust
19 of entrance facilities at its central offices at an unacceptable rate, as
20 compared to current technologies such as fiber optic cable.
21

22 Q. WHAT IS YOUR RESPONSE TO MR. FALVEY'S STATEMENT ON
23 PAGE 44 OF HIS TESTIMONY THAT "IT SHOULD BE UP TO
24 E.SPIRE...TO EMPLOY COPPER ENTRANCE FACILITIES IN LIEU
25 OF...FIBER FACILITIES"?

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A. Mr. Falvey’s proposal simply flies in the face of the FCC’s rule, cited above in my initial response to this issue, that ILECs are not required to accommodate the use of copper in entrance facilities unless specifically approved by a state utilities commission. Mr. Falvey’s comments appear to be an attempt to unearth a settled issue.

Issue 39: Should e.spire be required to pay a Subsequent Application Fee to BellSouth for installation of co-carrier cross connects even when e.spire pays a certified vendor to actually perform the work?

Q. WHAT IS BELL SOUTH’S POSITION ON THIS ISSUE?

A. If a CLEC requests a co-carrier cross-connect after the initial collocation provisioning, it must submit an application with a Subsequent Application Fee. The CLEC must use a BellSouth certified vendor to place the co-carrier cross-connect, except in cases where the CLEC equipment and the equipment of the other collocators are located within contiguous collocation arrangements. In cases where the CLEC’s equipment and the equipment of the other collocator are located in contiguous collocation arrangements, the CLEC has the option to deploy the co-carrier cross-connects between the contiguous collocation arrangements. Where the subsequent application does not require provisioning or construction work (for example, adding cable support structures) by BellSouth, no Subsequent Application Fee will be

1 required, and the pre-paid fee shall be refunded to the CLEC.

2

3 Q. IS THERE ANY "DOUBLE-DIPPING" IN THE FEES BELLSOUTH IS
4 PROPOSING FOR INSTALLATION OF CO-CARRIER CROSS-
5 CONNECTS AS SUGGESTED BY MR. FALVEY ON PAGE 44 OF HIS
6 TESTIMONY?

7

8 A. Absolutely not. First, Mr. Falvey offers no explanation or evidence as to
9 where he believes "double-dipping" might be occurring. He seems to
10 base his remarks on the simple assumption that somehow the certified
11 vender work should cover everything. Such a simplistic approach is
12 untenable in the face of numerous examples of "additive" fees in
13 situations where optional work is dictated by the circumstances of each
14 case. In this situation, as I have described earlier, if the co-carrier
15 cross-connect cabling requires additional racks, the CLEC should pay
16 for their construction; if not, they should not pay.

17

18 Q. Did the United States Court of Appeals for the District of Columbia
19 Circuit address the issue of carrier to carrier cross connects in its
20 decision of March 17, 2000, in case No. 99-1176?

21

22 A. Yes. The Circuit Court in its Order stated:

23 One clear example of a problem that is raised by the breadth of
24 the Collocation Order's interpretation of "necessary" is seen in
25 the Commission's rule requiring LECs to allow collocating

1 competitors to interconnect their equipment with other collocating
2 carriers. See Collocation Order, 14 FCC Rcd at 4780 p 33 ("We
3 see no reason for the incumbent LEC to refuse to permit the
4 collocating carriers to cross-connect their equipment, subject
5 only to the same reasonable safety requirements that the
6 incumbent LEC imposes on its own equipment."). The obvious
7 problem with this rule is that the cross-connects requirement
8 imposes an obligation on LECs that has no apparent basis in the
9 statute. Section 251(c)(6) is focused solely on connecting new
10 competitors to LECs' networks. In fact, the Commission does
11 not even attempt to show that cross-connects are in any sense
12 "necessary for interconnection or access to unbundled network
13 elements." Rather, the Commission is almost cavalier in
14 suggesting that cross-connects are efficient and therefore
15 justified under s 251(c)(6). This will not do. The statute requires
16 LECs to provide physical collocation of equipment as "necessary
17 for interconnection or access to unbundled network elements at
18 the premises of the local exchange carrier," and nothing more.
19 As the Supreme Court made clear in Iowa Utilities Board, the
20 FCC cannot reasonably blind itself to statutory terms in the name
21 of efficiency. Chevron deference does not bow to such unbridled
22 agency action.

23
24 BellSouth's policies regarding carrier-to-carrier cross connects are
25 entirely reasonable in the light of the Circuit Court's opinion that

1 providing for such cross-connects are not even required of an
 2 incumbent local exchange carrier (ILEC) such as BellSouth.

3

4 ***Issue 40: Should BellSouth be required to respond to all e.spire***
 5 ***applications for physical collocation space within 45 calendar days of***
 6 ***submission?***

7

8 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

9

10 A. BellSouth will respond within ten (10) business days of receipt of an
 11 application as to whether space is available or whether the application
 12 is complete and correct. If the application is not complete and correct,
 13 BellSouth will inform the CLEC of the items necessary to be changed
 14 so as to cause the application to become complete and correct. When
 15 space has been determined to be available, BellSouth will provide a
 16 comprehensive written response within thirty (30) business days of
 17 receipt of a complete and correct application. When multiple
 18 applications are submitted within a fifteen business day window,
 19 BellSouth will respond to the applications as soon as possible, but no
 20 later than the following: within thirty (30) business days for 1-5
 21 applications; within thirty-six (36) business days for 6-10 applications;
 22 and within forty-two (42) business days for 11-15 applications.
 23 Response intervals for multiple applications submitted within the same
 24 timeframe for the same state in excess of 15 must be negotiated.

25

- 1 Q. SHOULD BELLSOUTH BE REQUIRED TO AGREE TO A STANDARD
2 INTERVAL FOR APPLICATIONS IN EXCESS OF 15?
3
- 4 A. No. As I stated previously, response intervals for applications in excess
5 of 15 must be negotiated. This is due to resource and manpower
6 concerns.
7
- 8 Q. ON PAGE 45 OF HIS TESTIMONY, MR. FALVEY STATES THAT
9 BELLSOUTH SHOULD RESPOND TO E.SPIRE'S INITIAL REQUEST
10 ABOUT THE AVAILABILITY OF SUITABLE SPACE WITHIN 10
11 CALENDAR DAYS. WHAT IS YOUR RESPONSE?
12
- 13 A. BellSouth has been and remains committed to responding to the initial
14 requests concerning space availability within 10 business days, not 10
15 calendar days. Business days are more appropriate for this
16 requirement given the relatively short interval involved and the fact that
17 the work involved must be accomplished by numerous personnel during
18 regular business hours.
19
- 20 Q. ALSO ON PAGE 45 AT THAT SAME POINT IN HIS TESTIMONY, MR.
21 FALVEY SUGGESTS TWO ABSOLUTE INTERVALS OF 30 AND 45
22 CALENDAR DAYS FOR RESPONDING TO GROUPS OF UP TO 15
23 ORDERS AND THEN GROUPS OF 16 ORDERS AND ABOVE. IS HIS
24 PROPOSAL REASONABLE?
25

1 A. No. As I have stated above, more flexibility is required to appropriately
 2 respond to various levels of multiple orders for a given due date.
 3 Normal staffing levels for a particular exchange may not be adequate
 4 for large quantities of orders. To appropriately augment normal staffing
 5 levels requires a degree of individual planning and coordination that
 6 cannot be adequately measured by the types of absolute quantities
 7 suggested by Mr. Falvey.

8
 9 ***Issue 41: When BellSouth responds to an e.spire application for physical***
 10 ***collocation by offering to provide less space than requested, or space***
 11 ***configured differently than requested, should such a response be treated***
 12 ***as a denial of the application sufficient to entitle e.spire to conduct a***
 13 ***central office tour?***

14
 15 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

16
 17 A. The application response will detail whether the amount of space
 18 requested is available or, if the amount of space requested is not
 19 available, the amount of space that is available. The response will also
 20 include a description of any required configuration of the space. Should
 21 BellSouth's response offer less space than requested or space
 22 configured differently than requested, such a response should not be
 23 treated as a denial of the application sufficient to entitle e.spire to
 24 conduct a central office tour. FCC Rule 51.321(f) states the following:
 25 An incumbent LEC that contends space for physical collocation

1 is not available in an incumbent LEC premises must also allow
2 the requesting carrier to tour the entire premises in question, not
3 just the area in which space was denied, without charge, within
4 ten days of receipt of the incumbent LEC's denial of space.

5
6 This FCC rule only requires an incumbent LEC to conduct a tour if
7 space is not available in the incumbent LEC's premises. BellSouth
8 believes offering less space than requested or offering space
9 configured differently than requested is not the same as space denial.
10 Thus, in such a situation, no tour is required by the FCC's rules.

11
12 Q. ON PAGE 46 OF HIS TESTIMONY, MR. FALVEY CONTENDS THAT
13 "VERIFICATION IS APPROPRIATE" IF BELL SOUTH'S RESPONSE
14 OFFERS A "SITUATION MATERIALLY DIFFERENT THAN THE ONE
15 APPLIED FOR" AND "IS AN EFFECTIVE DENIAL". HOW DO YOU
16 RESPOND?

17
18 A. Mr. Falvey is again attempting to rework an issue that has been settled
19 by the FCC. The FCC's rule only requires tours if an ILEC has
20 exhausted all of its collocation space. So long as BellSouth is able to
21 offer space, the FCC's rule requiring central office tours is simply not
22 applicable. However, until collocation space is exhausted, BellSouth
23 will attempt to accommodate specific proposals that might otherwise be
24 declined by suggesting smaller amounts of space or possible
25 reconfigurations.

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Q. WHAT IS YOUR RESPONSE TO MR. FALVEY'S TESTIMONY ON PAGE 46 THAT BELL SOUTH "COULD UNDERCUT E.SPIRE'S EFFORTS BY REPETITIVE, SLIGHT MISMATCHES..."?

A. Mr. Falvey's testimony is absolutely without foundation or any supporting evidence that BellSouth has attempted to thwart e.spire's collocation efforts. To the contrary, as I stated in my response to the previous question, BellSouth makes every effort to facilitate collocation applications by offering alternative configurations, a step not required by FCC or state commission rules.

Issue 42: Should the prescribed intervals for response to collocation requests be shortened from the BellSouth standard proposal?

Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

A. The intervals within which BellSouth must provide a response to collocation requests should not be shortened. BellSouth provides a comprehensive written response to each application for collocation. The development of the application response is complex, but the process is efficient. First, the CLEC submits an application for collocation to its Account Team Collocation Coordinator ("ATCC"). When the application is received by the ATCC, in addition to verifying that it is complete and accurate, the ATCC must distribute the

1 application to six different departments within BellSouth and to one
2 BellSouth Certified Vendor. BellSouth's Property and Services
3 Management ("P&SM") group evaluates the impact of the applicant's
4 equipment placement on existing central office building support
5 systems such as, heating, ventilation, and air conditioning (HVAC), and
6 building space. BellSouth's Common Systems Capacity Management
7 ("CSCM") group and Circuit Capacity Management ("CCM") group
8 assess the central office infrastructure related to the application, such
9 as cable rack requirements, cable lengths and routes, fiber entrance
10 arrangements and routes, and point of demarcation terminations. In the
11 event the CLEC wishes to place its own entrance facility, BellSouth's
12 Outside Plant Engineering ("OSPE") group surveys the location and
13 determines the availability of spare ducts from the manhole into the
14 central office and whether construction or rearrangements will be
15 required. BellSouth's Power Capacity Management ("PCM") group and
16 BellSouth's certified power vendor analyze the impact of the application
17 on existing power capacity within the central office to determine
18 whether additional power capacity will be required to support the
19 collocator's equipment. The BellSouth Interconnection Network Access
20 Coordinator ("INAC") then reviews the application responses from each
21 of the network organizations, verifies that the response is complete and
22 accurate, and coordinates the response back to the applicant through
23 the ATCC.

24
25 Thus, considering the scope of the work activities required, BellSouth's

1 proposed interval for its response to collocation requests is appropriate.

2

3 Q. IS BELLSOUTH'S PROPOSAL THAT RESPONSE INTERVALS BE
4 STATED IN BUSINESS DAYS RATHER THAN CALENDAR DAYS
5 "SOMEWHAT DECEPTIVE" AS STATED BY MR. FALVEY ON PAGE
6 46 OF HIS TESTIMONY?"

7

8 A. There is nothing deceptive about it. As described in detail above,
9 BellSouth's proposal to use business days merely reflects the actual
10 workdays needed by vendors' employees and BellSouth's employees
11 engaged in preparing an adequate response to a CLEC's inquiry.

12

13 Q. DOES BELLSOUTH USE OF BUSINESS DAYS VIOLATE THE FCC'S
14 COLLOCATION RULES AND POLICIES AS ALLEGED BY MR.
15 FALVEY ON PAGE 47 OF HIS TESTIMONY?

16

17 A. No. The FCC's rule at 47 CFR §51.321(h) reads as follows:
18 "Upon request, an incumbent LEC must submit to the requesting
19 carrier within ten days of the submission of the request a report
20 indicating the incumbent LEC's available collocation space in a
21 particular LEC premises." (emphasis added)

22

23 As can be plainly seen, the rule does not specify calendar or business
24 days. BellSouth believes its interpretation is reasonable for the reasons
25 set out above.

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Q. WHAT IS YOUR RESPONSE TO MR. FALVEY'S EXAMPLE OF A RESPONSE INTERVAL WHICH COULD POSSIBLE TAKE "TWO WEEKS OR MORE" TO PROCESS"?

A. Mr. Falvey's example obviously chooses to offer up the worst possible case that could occur only in those few periods of the year containing weeks with holidays. By doing so, I believe he makes BellSouth's point, namely, that the people needed to prepare a response may, indeed, be on holiday. However, what Mr. Falvey fails to mention is the much more typical example of a CLEC delivering its inquiry to BellSouth on a Monday morning of a two-week period without holidays and thereby receiving its response no later than Friday of the following week, a ten business day process.

Q. ON PAGE 47 OF HIS TESTIMONY, MR. FALVEY COMPLAINS ABOUT THE PROVISIONS OF SECTION 6.3.1 OF THE PARTIES' INTERCONNECTION AGREEMENT THAT PROVIDES FOR BELL SOUTH TO PROVIDE AN ACKNOWLEDGEMENT OF THE RECEIPT OF E.SPIRE'S ORDER WITHIN 5 BUSINESS DAYS? WHAT IS YOUR RESPONSE?

A. There is no FCC obligation that BellSouth even confirm receipt of collocation orders. BellSouth simply does so as a matter of courtesy and good business communication. If e.spire would prefer that

1 confirmation receipts not be sent, BellSouth can stop doing so.

2 However, I would point out that BellSouth also checks for order errors
3 and informs the CLEC with 10 business days if errors or incompletions
4 are detected.

5

6 Q. ON PAGE 47 OF HIS TESTIMONY, MR. FALVEY AGAIN COMPLAINS
7 ABOUT THE INTERVALS REQUIRED TO RESPOND TO INQUIRIES
8 INVOLVING MULTIPLE ORDERS. HOW DO YOU RESPOND?

9

10 A. Again, Mr. Falvey simply ignores the impact that a large number of
11 orders can have on normal staffing levels in a particular locale. His
12 proposal to substitute calendar days for business days in calculating the
13 required interval is merely a device to unreasonably shorten the interval
14 to a point inconsistent with the amount of work that must be
15 accomplished to fully respond to a CLEC's request for unusually large
16 groups of orders.

17

18 ***Issue 43: Should BellSouth be permitted to extend its collocation***
19 ***intervals simply because e.spire changes its application request?***

20

21 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

22

23 A. BellSouth should be permitted to extend its collocation intervals if
24 e.spire changes its application request. Each requested change must
25 be evaluated on a case-by-case basis. As I stated previously, the

1 development of the application response is complex. Any change to
2 the application must be reviewed to ensure that the existing and
3 planned support systems, central office infrastructure, and power
4 capacity will meet e.spire's needs and will not adversely impact the
5 service provided by BellSouth to its end users and to other CLECs.
6 Additional review, obviously, will take additional time. Intervals may be
7 extended based on the nature or timing of the CLEC's change to its
8 application. For example, if the CLEC revised its application to request
9 more space or to place more equipment (which would require additional
10 power equipment and heating and cooling capacity), then the
11 provisioning interval, by necessity, would have to be extended.

12
13 Q. ARE THE INTERVALS PROPOSED BY BELL SOUTH "MORE THAN
14 GENEROUS" AS ALLEGED BY MR. FALVEY ON PAGE 48 OF HIS
15 TESTIMONY?

16
17 A. No. BellSouth's proposed intervals merely reflect the time required to
18 do the work. Mr. Falvey offers no evidence to support any claim to the
19 contrary.

20
21 Q. HOW DO YOU RESPOND TO MR. FALVEY'S ATTEMPTS ON PAGE
22 49 OF HIS TESTIMONY TO DISTINGUISH BETWEEN "VERY
23 MARGINAL" CHANGES AND OTHER KINDS OF CHANGES?

24
25 A. Mr. Falvey's discussion immediately raises the issue of who decides

1 what is "marginal" and what is otherwise? In this matter, the people
 2 who do the work could find any detail significant, even though
 3 seemingly small in the eyes of someone not charged with doing the
 4 work, if that detail impacts the accuracy of their work, triggers "rework"
 5 of drawings or specifications, or interferes with the process flow of the
 6 collocation request. If the changes are not "very marginal", Mr. Falvey's
 7 testimony implies the correctness of extending the interval. One can
 8 only wonder why e.spire would send BellSouth changes that they
 9 believe are so "very marginal." If the changes are not worth the interval
 10 delay that a change would trigger, then e.spire could easily elect not to
 11 send them.

12
 13 ***Issue 44: Should the prescribed intervals for completion of physical***
 14 ***collocation space be shortened from the BellSouth standard proposal?***

15
 16 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

17
 18 A. BellSouth's collocation provisioning intervals are reasonable and should
 19 not be shortened. BellSouth will negotiate construction and
 20 provisioning intervals per request on an individual case basis. In the
 21 case of enclosed physical collocation, excluding the time interval
 22 required to secure the appropriate government licenses and permits,
 23 BellSouth will use best efforts to complete construction for collocation
 24 arrangements under ordinary conditions as soon as possible and within
 25 a maximum of 90 business days from receipt of a complete and

1 accurate bona fide firm order. Ordinary conditions are defined as space
2 being available with only minor changes to support systems required,
3 such as but not limited to, HVAC, cabling, and the power plant(s).
4 Excluding the time interval required to secure the appropriate
5 government licenses and permits, BellSouth will use best efforts to
6 complete construction of all other collocation space under
7 "extraordinary conditions" within 130 business days of the receipt of a
8 complete and accurate bona fide firm order. Extraordinary conditions
9 are defined to include but are not limited to major BellSouth equipment
10 rearrangements or additions; power plant additions or upgrades; major
11 mechanical additions or upgrades; major upgrades for Americans with
12 Disability Act (ADA) compliance; environmental hazards or hazardous
13 materials abatements. These intervals are reasonable and should be
14 adopted by the Commission.

15
16 For unenclosed physical collocation ("cageless collocation"), BellSouth
17 believes it appropriate to adopt the standard interval in the
18 Commission's order in the arbitration between BellSouth and
19 ITC^DeltaCom in Docket No.1999-259-C that provided that cageless
20 physical collocation should be provisioned within 90 calendar days.

21
22 Q. ON PAGE 50 OF HIS TESTIMONY, MR. FALVEY ALLEGES THAT
23 BELL SOUTH PROPOSED LANGUAGE "MAKES NO DISTINCTION
24 BETWEEN DELIVERY OF CAGED PHYSICAL COLLOCATION
25 ARRANGEMENTS AND CAGELESS ARRANGEMENTS." DO YOU

1 AGREE?

2
3 A. No, I do not. BellSouth's provisioning interval is not controlled by the
4 time required to construct an arrangement enclosure. Where BellSouth
5 performs the construction of an arrangement enclosure, the activities
6 required to design and construct the enclosure are not the controlling
7 factor in the provisioning interval for collocation. Mr. Falvey provides no
8 basis for his claim and does not acknowledge the other critical activities
9 which must be performed to provide for a collocation arrangement,
10 regardless of whether that arrangement is enclosed or unenclosed,
11 such as providing upgrades to power capacity and supply, heating,
12 ventilation, and air conditioning (HVAC), as well as the cable racking
13 and cross-connect capacity required to serve the collocation space.

14
15 Q. ALSO ON PAGE 50, MR. FALVEY STATES HIS BELIEF THAT THE
16 ABSENCE OF CAGE CONSTRUCTION AUTOMATICALLY SHOULD
17 REDUCE THE AMOUNT OF TIME REQUIRED TO PROVISION
18 CAGELESS COLLOCATION. IS HE CORRECT?

19
20 A. No, he is wrong. Cage construction, if requested, is done in parallel
21 with other required work. So eliminating the requirement for the cage
22 has no effect on the overall interval.

23
24 Q. AT THE TOP OF PAGE 51 OF HIS TESTIMONY, MR. FALVEY
25 DISCUSSES E.SPIRE'S PROPOSED INTERVALS BUT ALSO

1 DISTINGUISHES BETWEEN INSTALLATIONS "WITH BELL SOUTH
2 INSTALLATION OF BAY/RACKS AND CLEC INSTALLATION OF
3 BAY/RACKS." PLEASE COMMENT.
4

5 A. Clearly, BellSouth disagrees with e.spire's proposed intervals for
6 reasons already discussed. However, BellSouth does not understand
7 what e.spire refers to about installation of bay/racks. My understanding
8 is that e.spire typically installs in own switching and transmission
9 equipment in its collocation spaces.
10

11 Q. ON PAGE 51 OF HIS TESTIMONY, MR. FALVEY SUGGESTS THAT
12 INSTALLATION INTERVALS COULD BE REDUCED WERE
13 BELL SOUTH AND E.SPIRE TO MEET IN ADVANCE OF E.SPIRE'S
14 SUBMITTING ITS APPLICATIONS. PLEASE COMMENT.
15

16 Q. BellSouth agrees that preliminary planning and some pre-provisioning
17 could be done up front rather than waiting on e.spire's firm order.
18 BellSouth is willing to engage in such a process if e.spire is willing to
19 financially commit to pay for the work BellSouth performs as a result of
20 any preliminary planning.
21

22 ***Issue 45: Should BellSouth be permitted to impose non-recurring***
23 ***charges on e.spire when converting existing virtual collocation***
24 ***arrangements to cageless physical collocation?***
25

1 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

2

3 A. The terms and conditions that should apply for converting virtual
4 collocation arrangements to physical collocation arrangements should
5 be consistent with the terms and conditions used for the assessment
6 and provisioning of physical collocation. Virtual collocation and physical
7 collocation are two different offerings. An application for a conversion
8 of virtual to physical should be evaluated just as an application for
9 physical collocation would be evaluated. Requests for in-place
10 conversions from virtual collocation to physical collocation should be
11 evaluated on an individual case basis, and a set of criteria used that will
12 ensure consistency in evaluation. This conversion process gives
13 BellSouth the ability to manage its space in the most efficient manner
14 possible both for its own needs as well as the needs of existing and
15 potential collocators. BellSouth must separately review its ability to
16 provide physical collocation and assess the support components
17 necessary for the particular arrangement (that is, space allocation,
18 HVAC, power feeder and distribution, grounding, and cable racking). In
19 performing these activities, BellSouth incurs costs. Hence, BellSouth
20 should be permitted to impose non-recurring charges when converting
21 existing virtual collocation arrangements to cageless physical
22 collocation in order to recover those costs.

23

24 Q. ON PAGE 52 OF HIS TESTIMONY, MR. FALVEY ALLEGES THAT
25 "ILECS WERE TYPICALLY OPPOSED TO CAGELESS

1 COLLOCATION." IS HE CORRECT?

2

3 A. Insofar as BellSouth is concerned, he is not. BellSouth offered
4 cageless collocation in collocation common areas even before the
5 FCC's latest order.

6

7 Q. IN THAT SAME PARAGRAPH, MR. FALVEY STATES THAT
8 BELL SOUTH'S TARIFFS REQUIRED CLECS TO "TAKE MORE
9 SPACE THAN THEY REALLY NEEDED" AND REFERS TO A 100
10 SQUARE FOOT MINIMUM. PLEASE COMMENT.

11

12 A. First, the 100 square foot minimum applied only to caged collocation,
13 not cageless collocation. Second, the 100 square foot minimum was
14 believed to be the smallest amount that could be caged in a way that
15 permitted safety and electrical codes to be met. BellSouth's policy now
16 permits enclosures of any square footage so long as all safety and fire
17 codes are met.

18

19 Q. IN THAT SAME PARAGRAPH, MR. FALVEY CITES THREE
20 EXAMPLES (FUTURE GROWTH PLANS, STORAGE OF UNUSED,
21 OBSOLETE EQUIPMENT, ENVIRONMENTAL UNSUITABILITY) OF
22 REASONS WHY VACANT SPACE COULD NOT BE USED FOR
23 COLLOCATION, THUS IMPLYING THAT BELL SOUTH WAS
24 IMPROPERLY WITHOLDING USE OF SUCH SPACE FROM CLECS.
25 HOW DO YOU RESPOND?

- 1
- 2 A. First, the FCC permits ILECs to reserve space for future growth.
- 3 Second, BellSouth is always willing to remove unused, obsolete
- 4 equipment to make room for collocations upon CLEC request and with
- 5 appropriate cost recovery. Third, would e.spire be willing to put its
- 6 equipment in an environmentally unsuitable location? I think not.
- 7
- 8 Q. FINALLY, IN THAT SAME PARAGRAPH, MR. FALVEY ACCUSES
- 9 ILECS OF "MINIMIZING SPACE...FOR CLECS...COMPELLING
- 10 CLECS TO ACCEPT THE LESS FAVORABLE VIRTUAL
- 11 ALTERNATIVE." PLEASE COMMENT.
- 12
- 13 A. Mr. Falvey is simply wrong. As I have shown in answers to the three
- 14 previous questions regarding this paragraph, Mr. Falvey's
- 15 understanding of BellSouth policies and practices for caged and
- 16 cageless collocation is incorrect, and thus his concluding sentence,
- 17 which is based on those misunderstandings, is obviously unsupported
- 18 by any accurate facts.
- 19
- 20 Q. ON PAGE 53 OF HIS TESTIMONY, MR. FALVEY STATES THAT IT IS
- 21 NOT NECESSARY "TO DO MUCH" TO CONVERT A VIRTUAL
- 22 COLLOCATION ARRANGEMENT TO A CAGELESS PHYSICAL
- 23 ARRANGEMENT. IS HE CORRECT?
- 24
- 25 A. He is not correct. Such conversions require careful review, and in

1 some cases, physical rearrangements. The FCC gave certain rights to
2 ILECs that must be preserved: First, ILECs have the right to reserve
3 space for their own future use. Therefore, virtual collocation
4 arrangements cannot be converted to cageless if the virtual collocation
5 arrangement is in the equipment "line-up" of the ILECs future
6 expansion. Second, ILECs have the right to secure their own
7 equipment. If that is not possible given the existing location of the
8 CLECs virtual collocation arrangement, then conversion in place is not
9 appropriate.

10

11 Q. IN THE SECOND PARAGRAPH ON PAGE 53 OF HIS TESTIMONY,
12 MR. FALVEY CITES THREE REASONS WHY A CLEC'S VIRTUAL
13 COLLOCATION EQUIPMENT WOULD HAVE TO BE RELOCATED,
14 IMPLYING THAT ILECS ARE ACTING FROM A LACK OF
15 MOTIVATION. PLEASE COMMENT.

16

17 A. Mr. Falvey fails to state that the reasons cited are precisely those
18 discussed in my previous answer that are provided as legitimate
19 reasons by the FCC in its latest order that a CLEC's virtual
20 arrangement would need to be relocated.

21

22 Q. IN THAT SAME PARAGRAPH, MR. FALVEY STATES THAT "IT IS
23 FUNDAMENTALLY UNFAIR TO CHARGE THE CLEC" FOR
24 CONVERTING A VIRTUAL COLLOCATION ARRANGEMENT.
25 PLEASE RESPOND.

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A. BellSouth disagrees. BellSouth is willing to continue existing virtual arrangements. Some CLECs chose virtual collocation even in cases where physical collocation was available. If the CLEC chooses to convert and equipment must therefore be moved, the CLEC should bear the cost as it would with any other collocation cost.

Q. IN THE LAST PARAGRAPH ON PAGE 53, MR. FALVEY STATES THAT BELL SOUTH SHOULD BEAR CONVERSION COSTS FROM VIRTUAL COLLOCATION BECAUSE PHYSICAL COLLOCATION WAS DENIED BY BELL SOUTH. PLEASE COMMENT.

A. By making such a proposal, Mr. Falvey implies that any denials of physical collocation e.spire may have received were improper. They were not. We live in an imperfect world. Some central offices have plenty of collocation space; others do not. Where they did not, BellSouth offered virtual collocation as an alternative, which, at the time, must have been acceptable to e.spire if e.spire contracted for the service. If e.spire now chooses some other alternative, it is only right that it bear the conversion costs that may be involved in doing so.

Issue 46: Should BellSouth be permitted to place restrictions not reasonably related to safety concerns on e.spire's conversions from virtual to cageless physical collocation arrangements?

1 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

2

3 A. BellSouth believes its policies regarding conversion of virtual collocation
4 arrangements to physical collocation arrangements are reasonable and
5 in compliance with the FCC's collocation rules.

6

7 BellSouth will convert virtual collocation arrangements to physical
8 collocation arrangements upon e.spire's request. However, if BellSouth
9 determines in a nondiscriminatory manner that the arrangement must
10 be relocated, e.spire should pay the cost of such relocation.

11

12 Q. IN WHAT CIRCUMSTANCES WILL BELL SOUTH AGREE TO
13 CONVERT VIRTUAL COLLOCATION ARRANGMENTS TO PHYSICAL
14 COLLOCATION ARRANGEMENTS "IN PLACE", THAT IS, WITHOUT
15 PHYSICALLY MOVING OR REARRANGING THE EQUIPMENT IN
16 THE VIRTUAL COLLOCATION ARRANGEMENT?

17

18 A. BellSouth will authorize the conversion of virtual collocation
19 arrangements to physical collocation arrangements "in place" without
20 requiring the relocation of the virtual arrangement where there are no
21 extenuating circumstances or technical reasons that would make the
22 arrangement a safety hazard within the premises or would otherwise
23 cause the resulting arrangement to not be in conformance with the
24 terms and conditions of the parties' collocation agreement.

25

1 BellSouth allows conversion of a virtual collocation arrangement to a
2 physical collocation arrangement "in place" where (1) there is no
3 change in the amount of equipment and no change to the arrangement
4 of the existing equipment, such as re-cabling of the equipment; (2) the
5 conversion of the virtual arrangement would not cause the arrangement
6 to be located in the area of the premises reserved for BellSouth's
7 forecast of future growth; and (3) due to the location of the virtual
8 collocation arrangement, the conversion of said arrangement to a
9 physical arrangement would not impact BellSouth's ability to secure its
10 own facilities as granted by the FCC. The FCC stated:

11 "The incumbent LEC may take reasonable steps to protect its
12 own equipment, such as enclosing the equipment in its own
13 cage..."

14 (FCC.99-48; Paragraph 42).
15

16 A collocator always has the option to request to convert the services on
17 an existing virtual collocation arrangement to a new physical collocation
18 arrangement. If the collocator should make such a request, the
19 collocator should be responsible for any costs incurred.
20

21 Q. DID THE UNITED STATES COURT OF APPEALS FOR THE
22 DISTRICT OF COLUMBIA CIRCUIT ADDRESS THE ISSUE OF
23 WHICH CARRIER WOULD SELECT THE LOCATION OF
24 COLLOCATION SPACE IN ITS DECISION OF MARCH 17, 2000, IN
25 CASE NO. 99-1176?

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A. Yes, the Circuit Court's Order stated:

In particular, petitioners point to paragraph 42 of the Collocation Order, which states, in part, that LECs must give competitors the option of collocating equipment in any unused space within the incumbent's premises, to the extent technically feasible, and may not require competitors to collocate in a room or isolated space separate from the incumbent's own equipment.

Id. at 4785 p 42 (emphases added); see also Reply Br. at 16 (complaining about paragraph 42). The Order acknowledges that a LEC "may take reasonable steps to protect its own equipment, such as enclosing the equipment in its own cage," id., but this gloss does not save the rest of the paragraph.

The FCC offers no good reason to explain why a competitor, as opposed to the LEC, should choose where to establish collocation on the LEC's property; nor is there any good explanation of why LECs are forbidden from requiring competitors to use separate entrances to access their own equipment; nor is there any reasonable justification for the rule prohibiting LECs from requiring competitors to use separate or isolated rooms or floors. It is one thing to say that LECs are forbidden from imposing unreasonable minimum space requirements on competitors; it is quite another thing, however,

1 to say that competitors, over the objection of LEC property
2 owners, are free to pick and choose preferred space on the
3 LECs' premises, subject only to technical feasibility. There is
4 nothing in s 251(c)(6) that endorses this approach. The statute
5 requires only that LECs reasonably provide space for "physical
6 collocation of equipment necessary for interconnection or access
7 to unbundled network elements at the premises of the local
8 exchange carrier," nothing more.

9
10 The sweeping language in paragraph 42 of the Collocation Order
11 appears to favor the LECs' competitors in ways that exceed what
12 is "necessary" to achieve reasonable "physical collocation" and
13 in ways that may result in unnecessary takings of LEC property.
14 Once again we find that the FCC's interpretation of s 251(c)(6)
15 goes too far and thus "diverges from any realistic meaning of the
16 statute." *Massachusetts v. Department of Transp.*, 93 F.3d at
17 893.

18
19 The Collocation Order again suggests that there may be cost
20 savings that will flow from the enunciated approach. See
21 Collocation Order, 14 FCC Rcd at 4785 p 42. This is a weak
22 claim. First, there is no explanation from the FCC as to why this
23 would be so. It is not intuitive that all of what is required by
24 paragraph 42 of the Collocation Order will support a decrease in
25 the cost of collocation and an increase in the amount of available

1 collocation space, as suggested by the FCC. See *id.* And merely
2 saying it does not make it so.

3 Second, and more importantly, as noted by the Court in Iowa
4 Utilities Board, "delay and higher costs for new entrants ... [that
5 may] impede entry by competing local providers and delay
6 competition" cannot be used by the FCC to overcome statutory
7 terms in the Telecommunications Act of 1996. 525 U.S. at
8 389-90.

9
10 We therefore vacate the Collocation Order insofar as it embraces
11 the aforementioned sweeping rules on physical collocation in
12 paragraph 42. On remand, the FCC will have an opportunity to
13 refine its regulatory requirements to tie the rules to the statutory
14 standard, which only mandates physical collocation as
15 "necessary for interconnection or access to unbundled network
16 elements at the premises of the local exchange carrier." 47
17 U.S.C. s 251(c)(6). Even counsel for the Commission seemed
18 unwilling to embrace an expansive view of paragraph 42: He
19 suggested that LECs should be allowed to choose the
20 collocation space; he also suggested that the LECs should be
21 allowed to segregate collocation space from the rest of a LEC's
22 property. If counsel's interpretation is correct, the FCC must
23 make that clear. In any event, paragraph 42, as presently
24 written, does not withstand scrutiny under step two of Chevron.
25

1 In light of the Circuit Court's decision, I believe BellSouth's policies
2 regarding the security measures associated with the conversion of
3 physical collocation to virtual collocation are entirely reasonable.
4

5 Q. ON PAGE 54 OF HIS TESTIMONY, MR. FALVEY STATES THAT
6 TECHNICAL FEASIBILITY ISSUES ARE NOT PERTINENT IN
7 CONVERTING VIRTUAL COLLOCATION TO CAGELESS PHYSICAL
8 COLLOCATION SINCE "BELL SOUTH PUT IT WHERE IT IS."
9 PLEASE COMMENT.
10

11 A. Mr. Falvey is incorrect in his assumption. A virtual collocation
12 installation may be technically feasible in a virtual environment but not
13 technically feasible in a cageless environment because of security and
14 space reservations reasons discussed elsewhere in this testimony.
15

16 Q. NEAR THE BOTTOM OF PAGE 54 OF HIS TESTIMONY, MR.
17 FALVEY STATES: "BELL SOUTH CAN EVEN CAGE ITS OWN
18 EQUIPMENT IF IT WANTS." IS HE CORRECT?
19

20 A. No, not in all cases. BellSouth cannot cage its own equipment in
21 instances where the CLEC's equipment is adjacent BellSouth's
22 equipment.
23

24 ***Issue 50: Should BellSouth be required to provide readily available***
25 ***results of UNE pre-testing to e.spire?***

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Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

A. At present, the BellSouth UNE Center notifies the CLEC if any pre-test result could jeopardize the expected due date, such as a no dial tone condition from the CLEC's switch. If all pre-tests are satisfactory, the order is ready for the conversion on the due date. No further notification should be required. BellSouth's provision of the UNE to e.spire is certification that the UNE meets technical standards. Thus, there is no need for BellSouth to provide to e.spire the results of pre-testing. Moreover, in many cases, there are no written pre-testing results; thus, BellSouth would have nothing to produce. Even in those few instances in which something is written, the format is often informal and not part of a systematic process. In such situations, BellSouth would incur the costs and time associated with explaining to e.spire that it did test the UNE, explaining that there are no written pre-testing results, or formalizing working notations for transmission to e.spire. Such efforts would be duplicative and unnecessary given that BellSouth has already certified to e.spire (in its provision of the UNE to e.spire) that it tested the UNE.

Q. IN HIS OPENING STATEMENT ON THIS ISSUE ON PAGE 56 OF HIS TESTIMONY, MR. FALVEY DISCUSSES PRE-TESTING AND POSITS THAT PRE-TESTING RESULTS MAY BE "READILY AVAILABLE." HOW DO YOU RESPOND?

1

2 A. Regrettably, Mr. Falvey's assumption is at odds with reality. As
3 described earlier in my testimony, pre-testing results are typically not
4 committed to written form. Further, if pre-testing results were provided
5 on some UNEs or services and not others, then the questions arise as
6 to whether there were (1) no specific tests performed; (2) no written
7 document created; (3) a failure to send what was written; (4) or a failure
8 by e.spire to properly route internally the information it had received
9 from BellSouth.

10

11 Q. IN THAT SAME PARAGRAPH, MR. FALVEY SETS FORTH A
12 SITUATION IN WHICH E.SPIRE FINDS STANDARD UNE TEST
13 PARAMETERS PROBLEMATIC FOR ITS PARTICULAR NEEDS AND
14 SHOULD THEREFORE BE RECEIVING TEST RESULTS. PLEASE
15 COMMENT.

16

17 A. If e.spire wants particular attributes for a UNE (and those are not the
18 attributes of the UNE requested as defined in applicable technical
19 service descriptions), then e.spire can request via the BFR process a
20 modification of a UNE or service which contains the particular attributes
21 that are desired.

22

23 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

24

25 A. Yes.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

CERTIFICATE OF SERVICE

MAR 24 2000

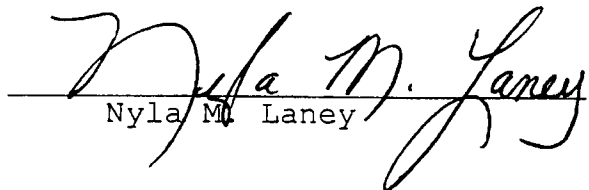
The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused the Direct Testimony of W. Keith Milner filed on behalf of BellSouth Telecommunications, Inc. in Docket No. 2000-040-C to be served this March 24, 2000 by the method indicated below each addressee listed:

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